

NEBRASKA ADMINISTRATIVE CODE

TITLE 220 – DEPARTMENT OF LABOR

CHAPTER 7 – PARTIAL TRANSFER OF EXPERIENCE ACCOUNTS

001. This chapter is adopted pursuant to *Neb. Rev. Stat.* §48-654, and §48-607.

002. A. Any transferee-employer who acquires a definable and segregable portion of an employer's business and payroll on or before December 31, 2004 may file with the Department, on a form supplied by it, an application to have the proper portion of the transferor-employer's experience account assigned to the transferee. A definable and segregable portion shall mean a distinct business operation for which a separate payroll is maintained or can be readily determined based upon the business activities of the employees within that operation. Such application shall contain the election of the transferee, if not already subject, to become subject to the provisions of the Employment Security Law and other information as requested. The form shall be filed with the Department within one-hundred twenty days from the date of the transfer. Failure to make a request within such time shall forfeit all rights to request a partial transfer of the account.

B. If a transferee-employer acquires a definable and segregable portion of the payroll and business of a commonly owned employer on or after January 1, 2005, the acquiring entity may file with the Department, on a form supplied by it, an application to have the proper portion of the transferor-employer's experience account assigned to the transferee. Such application shall contain the election of the transferee, if not already subject, to become subject to the provisions of the Employment Security Law and other information as requested. The form shall be filed with the Department within one hundred twenty days from the date of the transfer. The necessary additional information required to segregate the payroll shall be provided to the Department within sixty days from the date of application. Failure to make an application for partial transfer or supply the necessary additional information within such time shall forfeit all rights to request a partial transfer of the account.

003. Definitions.

A. Commonly owned employer shall mean an employer where:

1. At least fifty percent of the business entity of the successor is owned or controlled by individuals who, immediately preceding the change, owned or controlled fifty percent of the business entity of the predecessor; or
 2. At least fifty percent of both the predecessor and successor entities are owned or controlled by a common third party.
- B. Definable and segregable portion of a commonly owned business shall mean a distinct business operation for which a separate payroll is maintained or can be readily determined based upon the business activities of the employees within that operation.
004. Unless such application contains the written confirmation of the statements contained therein by the transferor, notice of such application shall be promptly given to the transferor by the Department. Should the transferor desire to contest the application, objections shall be filed with the Department within ten days from the date of mailing of the notice. Hearings of objections shall be conducted in the manner set out in Title 223, Chapter 1.
005. A successor employer's request for a partial transfer of an experience account shall be denied if:
- A. The predecessor or successor employer has not fully complied with Departmental regulations by fully paying all combined taxes due within sixty days after the successor employer has made application for a transfer of the experience account of the predecessor employer.
 - B. The predecessor employer had paid no wages during the most recent complete calendar year; or
 - C. The acquisition of the segregable portion of the commonly owned business was made solely or primarily for the purpose of obtaining a more favorable rate of combined tax. An acquisition shall be deemed to have been made primarily for such purpose if the Department finds an absence of any reasonable business purpose for the acquisition other than a more favorable combined tax rate.
006. Notwithstanding whether application for a partial transfer has been made, a partial transfer of an experience account shall be mandatory if the successor employer and the predecessor employer are commonly owned business entities and the successor-employer had a negative balance in its experience account on the date of the acquisition.
007. If an application for a partial transfer is approved, the Department shall assign to the

transferee that portion of the payroll experience represented by the portion of the business acquired. The Department shall also assign to the transferee that portion of the experience account of the transferor represented by the ratio of the sum of the payrolls of the portion of the business acquired to the sum of the entire payrolls of the transferor. The Department shall utilize wage information during the period of the current incomplete calendar year, if applicable, and the four completed calendar years immediately preceding the transfer. The transferee, if not already an employer, shall become an employer as of the date of the transfer.

008. The Department may redetermine a partial transfer allowed pursuant to this chapter whenever it finds that the partial transfer was granted on the basis of misrepresentations of fact, but in no case shall such redetermination be made more than four years after the date of the approval of the partial transfer.